offences caused no loss to the share-holders of HPBIL and that the appellant derived no personal gain or benefit from his acts or omissions in relation to these offences. Nevertheless, in respect of all the five charges, the finding of the trial judge, with which we agree, was that all the offences were committed wilfully. In our judgment, on all the facts and circumstances and having regard to section 171 of the Act, it cannot be said that the sentences imposed by the trial judge of six months' imprisonment on each of the first three charges and of one day's imprisonment on each of the other two charges were manifestly excessive. Accordingly, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Murphy & Dunbar.*

C.S. WU v. WANG LOOK FUNG & ORS.

[C.A. (Kulasekaram, Sinnathuray & D'Cotta JJ.) February 12, 1981]

[Singapore — Civil Appeal No. 57 of 1980]

Defamation — Libel — Libellous publication on solicitor — Compensatory damages — Appeal on quantum awarded by lower court.

The appellant in this case is a practising lawyer and senior partner of a law firm. The first and second respondents were at the material time journalists employed by the third respondents, publisher of the *New Nation.*

On November 12, 1975, there appeared on the front page of the *New Nation* a report, the material parts of which read as follows:

"Big probe on lawyers

By Francis Rozario and Wang Look Fung.

The Chief Justice, Mr. Wee Chong Jin, has ordered the Law Society to conduct an inquiry into the professional conduct of lawyer Foo See Juan over the disposal of at least $2 million worth of assets of a property development company.

This follows an originating summons taken out by Mr. Tay Beng Swee, chairman and managing director of the company, Sin Chew Realty Pte. Ltd. heard in chambers before the Chief Justice on October 24.

A similar summons taken out by Mr. Tay against another lawyer, Mr. C.S. Wu of Donaldson & Burkinshaw, is scheduled to be heard in chambers at a later date.

This is the first time in legal history that a member of the public has taken out such a summons against the Law Society of Singapore.

Mr. Tay had originally made a complaint against the two lawyers to the Law Society in April last year, which later informed him that there 'was no substance in the complaint.'

In its reply to Mr. Tay's complaint, the Council of the Law Society said: 'The inquiry committee has received a number of complaints arising out of what is clearly a dispute between the directors of a company known as Sin Chew Realty Pte. Ltd.

It appears to the inquiry committee that some of these complaints have almost certainly been made not primarily with a view to the institution of disciplinary proceedings but with a view to the enforcement of the civil rights of the parties without the necessity of their resorting to court.

So far as the complaint of Mr. Tay Beng Swee against Mr. C.S. Wu and Mr. Foo See Juan are concerned, the inquiry committee can find nothing of substance which could in any way justify disciplinary proceedings although the facts do disclose a number of possible claims'."

The headlines "Big probe on lawyers" were in bold large letters approximately 3/4" to 1" in height, and immediately below the headlines was a photograph (6" x 2") of the appellant with his name under it.

At the trial, the respondents admitted the libel. The only issue was the quantum of damages. Choor Singh J. awarded the appellant $25,000 as compensatory damages. The appellant appealed against the said judgment. He claimed that the trial Judge had erred in law and fact in not awarding the appellant aggravated damages on the ground of malice.

Held, dismissing the appeal: (1) on a review of the evidence, there was no malice on the part of the respondents. At the highest there was only evidence of negligence on the part of the respondents;

(2) the trial Judge had properly directed himself, and there was no reason to interfere with the award he had made.

Cases referred to:-

(1) *Manson* v. *Associated Newspapers Ltd.* [1965] 1 W.L.R. 1038.

(2) *McCarey* v. *Associated Newspapers Ltd. & Ors. (No. 2)* [1965] 2 W.L.R. 45.

HIGH COURT.

H.E. Cashin for the plaintiff.

Harry Elias for the defendants.

Cur. Adv. Vult.

Choor Singh J.: This is a defamation action brought by Mr. C.S. Wu an advocate and solicitor, arising out of a news report published in the *New Nation* of November 12, 1975.

The facts are these. The plaintiff is and has been for many years an advocate and solicitor practising such profession in Singapore as a partner in the law firm of Donaldson & Burkinshaw. The first and second defendants were at the material time journalists and the third defendants are and were at the material time publishers of the *New Nation,* a newspaper having a large circulation in Singapore.

On November 12, 1975 the first and second defendants wrote and caused to be printed and the third defendants printed on the front page of the issue of the *New Nation* dated that day of and concerning the plaintiff in the way of the said profession the words following: —

"Big probe on lawyers

By Francis Rozario and Wang Look Fung.

The Chief Justice, Mr. Wee Chong Jin, has ordered the Law Society to conduct an inquiry into the professional conduct of lawyer Foo See Juan over the disposal of at least $2 million worth of assets of a property development company.

This follows an originating summons taken out by Mr. Tay Beng Swee, chairman and managing director of the company, Sin Chew Realty Pte. Ltd. heard in chambers before the Chief Justice on October 24.

A similar summons taken out by Mr. Tay against another lawyer, Mr. C.S. Wu of Donaldson & Burkinshaw, is scheduled to be heard in chambers at a later date.

This is the first time in legal history that a member of the public has taken out such a summons against the Law Society of Singapore.

Mr. Tay had originally made a complaint against the two lawyers to the Law Society in April last year, which later informed him that there 'was no substance in the complaint.'

In its reply to Mr. Tay's complaint, the Council of the Law Society said: 'The inquiry committee has received a number of complaints arising out of what is clearly a dispute between the directors of a company known as Sin Chew Realty Pte. Ltd.

It appears to the inquiry committee that some of these complaints have almost certainly been made not primarily with a view to the institution of disciplinary proceedings but with a view to the enforcement of the civil rights of the parties without the necessity of their resorting to court.

So far as the complaint of Mr. Tay Beng Swee against Mr. C.S. Wu and Mr. Foo See Juan are concerned, the inquiry committee can find nothing of substance which could in any way justify disciplinary proceedings although the facts do disclose a number of possible claims'."

The plaintiff alleges that the said publication was false and malicious and that the words in their material and ordinary meaning meant and were understood to mean

(1) that the plaintiff in the exercise of his profession had been guilty of such conduct as to necessitate an inquiry with a view to his being struck off or suspended;

(2) that the plaintiff similarly to Mr. Foo See Juan, another lawyer, had conducted himself unprofessionally in the wrongful disposal of at least $2 million worth of assets of a property development company.

The headlines of the article complained of namely "Big Probe on Lawyers" were in letters approximately $\frac{3}{4}$" to 1" in height at the front page of the issue and there also appeared immediately below the said headlines one photograph only, namely a photograph of the plaintiff measuring 6" x 2" with the name "Mr. Wu" thereunder.

The plaintiff alleges that the juxtaposition of his photograph immediately under the said headlines was such as to bear the innuendo

(1) that there was on foot an investigation into the professional conduct of the plaintiff;

(2) that such investigation related to a serious or grave matter;

(3) that the plaintiff's conduct merited such investigation;

(4) that the plaintiff was the principal subject of the probe.

The plaintiff alleges that by reason of the premises he has been injured in his credit and professional reputation and has been brought into public scandal, odium and contempt.

The plaintiff further alleges that the third defendants published the said words and photograph calculated thereby to increase the circulation of the said newspaper with a view to making a profit from the sale of the said newspaper and of advertising space therein.

Lastly, it is alleged that the defendants and each of them knew or ought to have known that the policy of the law and common justice required that there should be no publication of the fact of any inquiry into the professional conduct of an advocate and solicitor until, if at all, the matter reached a hearing in open court. And the plaintiff claims damages on the footing of aggravated damages.

The defendants in their statement of defence deny that the said words bore or were understood to bear or were capable of bearing any of the meanings alleged by the plaintiff or any other meaning defamatory of the plaintiff. The defendants further say that the words complained of were inserted in the said newspaper without actual malice and without gross negligence and that before the commencement of these proceedings the defendants inserted in the said newspaper a full apology. The defendants also rely upon the provisions of section 10 of the Defamation Act, 1965.

On seeing the offending report in the *New Nation* of November 12, 1975 the plaintiff wrote on the same day to the Secretary of the Law Society of Singapore drawing the Society's attention to the article bearing the heading "Big Probe on Lawyers" and urged the Society to take positive action. The Society in turn wrote to the third defendants who published the Law Society's letter on the front page of the *New Nation* of November 21, 1975 under the heading "Law Society Reply": —

"I am directed by the Council of the Law Society to refer to your front page article headlined "Big Probe on Lawyers" in the New Nation of November 12, 1975.

The headline suggests a probe on lawyers generally when all the article does is to report on two matters brought before the Chief Justice by Mr. Tay Beng Swee involving two lawyers, namely Mr. Foo See Juan and Mr. C.S. Wu.

It is not the intention of the Council to comment on matters that are sub-judice but the grossly misleading headline is decidedly objectionable and does grave injustice to the legal profession as a whole.

Both the cases arose out of a complaint by Mr. Tay Beng Swee to the Law Society on the professional conduct of Mr. Foo and Mr. Wu. These were dealt with by the inquiry committee of the Law Society under the provisions of the Legal Profession Act and, in both cases, it was found that a formal investigation was not necessary within the terms of section 88 of the Act.

Mr. Tay Beng Swee the complainant, being dissatisfied with the decision, made an application under section 96 of the Act under which the judge hearing the application could affirm the decision of the Council or direct the Society to apply for the appointment of a disciplinary committee."

The so-called apology which the defendants claim to be a full apology appeared on page 4 of the paper of the same date under the heading "Editor's reply": —

"It is surprising that the Law Society should assume that our readers could conceive of a probe on all the members of an honourable profession.

Our report was factually accurate and emphasised the Law Society's views and findings... 'So far as the complaint of Mr. Tay Beng Swee against Mr. C.S. Wu and Mr. Foo See Juan are concerned, the inquiry committee can find nothing of substance which could in any way justify disciplinary proceedings....'

We repeat what we made clear in our report: there is no probe on Mr. C.S. Wu. There is an application by Mr. Tay Beng Swee to the High Court for an order that the Law Society should request the Chief Justice to appoint a disciplinary committee to consider Mr. C.S. Wu's conduct.

This application of Mr. Tay Beng Swee has not been heard. There is no reflection on Mr. Wu and we apologise for any distress we may have inadvertently caused."

On August 12, 1976, the third defendants published in their paper *"New Nation"* of that date another news report concerning the plaintiff: —

"Application against lawyer is dismissed

The High Court has dismissed an application by Mr. Tay Beng Swee chairman and managing director of Sin Chew Realty Pte. Ltd. for an order that the Law Society should

apply for the appointment of a disciplinary committee to investigate his complaint against a lawyer, Mr. C.S. Wu.

On November 12, 1975, New Nation reported Mr. Tay's application to the High Court.

On November 21, 1975, in reply to a letter from the Law Society, New Nation stated what was made clear in the first report, that there was no investigation on Mr. Wu. The New Nation had also stated: 'There is no reflection on Mr. Wu and we apologise for any distress we may have inadvertently caused.'

Mr. Wu, a partner of the legal firm of Donaldson & Burkinshaw, is taking legal action against New Nation."

Alongside this report the third defendants published a 4" x 2¼" photograph of the plaintiff with the words "Mr. Wu" underneath it. It must be noted that this news report was published two months after the plaintiff had commenced these proceedings against the defendants.

There was yet another report concerning the plaintiff published by the third defendants in the *New Nation* of August 27, 1979. Under a photograph of the plaintiff measuring 3" x 2" published on the front page of that issue there appeared the following: —

"*Mr. C.S. Wu and New Nation*

In the issue of the New Nation on November 12, 1975, there was a report headlined 'Big probe on lawyers', which referred to a complaint against two lawyers. The report was accompanied by a photograph of Mr. C.S. Wu, a lawyer.

We wish to withdraw any imputation to the effect that there was an investigation or probe into the professional conduct of Mr. Wu, or that his conduct in any way merited such investigation.

In amplification of earlier apologies, we hereby apologise unreservedly to Mr. Wu for any inconvenience or embarrassment which may have been caused to him as a result of the report."

It will be seen that there were in all four news reports published by the third defendants concerning the plaintiff on the following dates: —

First report	November 12, 1975
Second report	November 21, 1975
Third report	August 12, 1976
Fourth report	August 27, 1979.

The first and second defendants were parties to the first report only and that is the report which is the subject-matter of this action.

The plaintiff's evidence is that Sin Chew Realty Pte. Ltd. had been a client of his firm for many years. His firm did their conveyancing. Neither his firm nor he was involved in anyway in the disposal of two million worth of assets of Sin Chew Realty Pte. Ltd. He was not involved in the disposal of any property alleged to have belonged to Tay Beng Swee either as shareholder or as a Director. He has never acted for that gentleman and he did not think that he had ever met him. "No similar summons" involving the disposal of two million dollars was ever taken out against him by Mr. Tay or anyone else. He was not aware of any big probe on him by anybody in November 1975.

The plaintiff states that on reading the first report he felt he was being crucified for no good reason. His immediate reaction was one of utter disbelief and shock mixed with humiliation and a sense of outrage. He claims that he was depressed for several days afterwards over the publication of this article. He felt that it had ruined his professional integrity.

The plaintiff was in Bangkok on November 21, 1975 when the second report appeared in the *New Nation*. His office telexed to him the contents of that report. When he read the editor's reply it never occurred to him that that reply was intended as an apology directed to him. He read it as the editor's reply prompted by the letter received from the Law Society. There were three passages in the reply to which he took offence. The first paragraph he thought was arrogant and deliberately sarcastic. The very next line reading "our report was factually accurate" to his mind represented reaffirmation of the earlier libel. In the next paragraph (third paragraph) the statement "We repeat that we made clear in our report: There is no probe on Mr. C.S. Wu", he felt was an assertion made in bad faith. The plaintiff says that this is so because the first report, reading the contents in conjunction with the headline and his photograph appearing with it clearly asserts that there was a big probe or investigation conducted on him and to deny what was so obviously stated in the first paragraph could not have been a denial made in good faith. The plaintiff also takes exception to the final sentence referring to the distress the newspaper may have inadvertently caused him. It is the word "inadvertently" that he quarrels with. He says that he could not believe that a front page banner headline of a newspaper could have been inadvertently composed. He contends that it was obviously a deliberately worded headline to stir maximum sensationalism.

As regards the third report which appeared on August 12, 1976 the plaintiff says that the statement in the second column reading "On November 21, 1975, in the reply from a letter from the Law Society, *New Nation* stated what was made clear in the first report that there was no investigation on Mr. Wu" was an assertion he felt again made in bad faith for the reasons he has explained.

The plaintiff says that when the first report was published, his intention was to resort to defamation proceedings only as a last resort. His own preference was to obtain from the newspaper a full and frank apology and a retraction and the payment of a nominal sum to a charity of his choice. He instructed his solicitors to pursue such a course. It was not to seek damages against a newspaper in an action for damages. He failed to obtain what he wanted and as a result he was compelled to commence these proceedings to clear his name.

The plaintiff's attention was drawn to the following letter written by the third defendants to the plaintiff's solicitors: —

"We have your letter of 15th November

Your client will no doubt have seen the front page report in our issue of November 21, 1975.

There is no question of malice on our part towards your client. Our report was factual in respect of a matter of public interest. If there is any inaccuracy in it which your client would wish to correct, please let us hear from you."

The plaintiff says that there was clearly legal malice in this instance on the part of the defendants. Secondly, he disputes that the report was factual. Thirdly, he disputes that the report related to a matter of public interest. In his view the complaint to the Law Society against a member of the Bar before it is referred to the High Court for a show cause hearing is highly confidential and cannot be a matter of public interest. Fourthly, the last sentence in the letter reading "if there is any inaccuracy etc." is not appropriate in the case of a defamatory article. That practice generally applies to errors made in reports which warrant subsequent corrections.

As regards the fourth and last publication by the defendants made on August 27, 1979 the plaintiff says that when he read this report he inferred from it that the newspaper was admitting for the first time almost after four years after the first article that it had libelled him.

The defendants did not call any evidence and the submissions made by their counsel were entirely on the issue of damages.

It is now conceded by the defendants that they libelled the plaintiff. The only issue now before me is the quantum of damages.

Counsel for the defendants submits that the plaintiff is entitled to compensatory damages and not entitled to punitive damages. He submits that the plaintiff should be compensated by this court but the court should not punish the defendants by awarding the plaintiff punitive damages. I accept this submission. There is no question of this court punishing the defendants.

The law on the assessment of compensatory damages is set out in *Gatley* on Libel and Slander, 7th Edition in paragraphs 1358 and 1360 and it is unnecessary to set out those paragraphs in this judgment.

The plaintiff claims aggravated damages on the ground of malice. It is submitted that the defendants knew that their report was false; that they had no genuine belief in its truth and that that is conclusive evidence of malice.

In my opinion the plaintiff has failed to make out a case for aggravated damages. To succeed in his claim for aggravated damages, the plaintiff must prove that the defendants had not acted honestly but were actuated by some indirect or ulterior motive e.g. malice in the proper acceptation of that term. The words complained of were published in a report of a judicial proceeding and the mere proof that they are false is not evidence of malice. The fact that the defendants had no reasonable grounds for believing in their truth is again not, by itself, evidence of malice. At the highest, there is evidence of negligence or carelessness but that again is insufficient to warrant the award of aggravated damages. The question raised is really as to the state of mind of the defendants when they published the alleged libel, the question being whether they published it in the spirit of malice. In my judgment there is no evidence of dishonesty, personal spite, ill will or any wrong or improper motive on the part of the defendants and the words complained of are therefore not coloured by malice. Accordingly, the claim for aggravated damages fails.

Counsel for the plaintiff has cited as comparables the damages awarded to the Prime Minister in six defamation cases which arose out of speeches made at election rallies of political parties during the 1976 Parliamentary General Elections held in Singapore. In my opinion those cases are of a different class altogether. They arose out of political attacks on the integrity of the holder of the highest office in the land and are therefore not suitable comparables.

Counsel for the defendants relies on two English cases. The first one is *Manson* v. *Associated Newspapers Ltd.*[1] In this case a newspaper published an article about a woman whom it stated was wanted by the police for criminal offences, and containing the plaintiff's name and she brought an action for damages for libel. Compensatory damages in the sum of £1,500 were awarded. The second case is *McCarey* v. *Associated Newspapers Ltd. & Ors. (No. 2).*[2] The four defendant newspapers published reports of an inquest tending to suggest that the plaintiff, a doctor, had attempted to shift the blame for the death of a patient, who had died after an accidental injection by the plaintiff of surgical spirit instead of saline, on to someone else and that he had been rebuked by the coroner for so doing. The plaintiff brought an action for damages for libel against each of the newspapers, the actions subsequently being consolidated. The jury found for the plaintiff and awarded him £9,000 damages. On appeal the award was set aside and a new trial ordered on the ground that the amount awarded was "much too large".

Counsel for the defendants suggests that in the light of these two cases, the amount to be awarded to the plaintiff should not exceed $15,000 and that to go beyond that figure "would open the Pandora Box".

In my opinion English cases on quantum are of little assistance, since almost all cases involving prominent persons are settled out of court. Where an action goes to trial the amount of the award is determined by a jury which hears no evidence as to awards in other cases. Consequently there is no scale and no logic in English awards of damages for defamation.

In my opinion each case must be judged on its own particular facts and on its own merits. In the present case a very serious libel has been perpetrated on the plaintiff. It was obviously perpetrated for financial gain, not caring what distress it would cause to the plaintiff and what harm it would inflict on the personal and professional reputation of a very successful advocate and solicitor who is well-known in the business world as one of the senior partners of Donaldson & Burkinshaw. He is a man of some standing. The plaintiff is named. His firm is named and his photograph is published. One must look at the original copy of the *New Nation* of November 12, 1975 to appreciate the impact of the libellous matter on readers of the *New Nation*. The banner headline informs the readers of the *New Nation* that there is on foot an investigation into the professional conduct

of the plaintiff. There is also a hint of dishonesty. The readers of the *New Nation* are told that the plaintiff, similarly to Mr. Foo See Juan, another lawyer, has conducted himself unprofessionally in the wrongful disposal of at least two million dollars worth of assets of a property development company. The juxtaposition of the plaintiff's large photograph immediately under the banner headline would give readers of the *New Nation* the clear impression that the plaintiff was the principal subject of the probe.

Bearing in mind the principles applicable in the assessment of compensatory damages and having regard to the whole conduct of the defendants, in particular their several efforts towards mitigation of damages, and allowing "for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused" (*per* Lord Radcliffe in *Associated Newspapers* v. *Dingle*[3]) I award the plaintiff $25,000 as compensatory damages.

From the above judgment the plaintiff appealed to the Court of Appeal.

COURT OF APPEAL.

H.E. Cashin for the appellant.

Harry Elias for the respondents.

Cur. Adv. Vult.

Sinnathuray J. (delivering the judgment of the Court): This is an appeal on the quantum of damages given by Choor Singh J. in a defamation action. The appellant, C.S. Wu, is a practising advocate and solicitor of over 20 years' standing. He is one of the senior partners of Donaldson & Burkinshaw. The first and second respondents were at the material time journalists, and the third respondents are and were at the material time publishers of the *New Nation*, the only afternoon English newspaper published in Singapore.

On November 12, 1975 there appeared on the front page of the *New Nation* a report, the material parts of which are as follows:

"Big probe on lawyers

By Francis Rozario and Wang Look Fung.

The Chief Justice, Mr. Wee Chong Jin, has ordered the Law Society to conduct an inquiry into the professional conduct of lawyer Foo See Juan over the disposal of at least $2 million worth of assets of a property development company.

This follows an originating summons taken out by Mr. Tay Beng Swee, chairman and managing director of the company Sin Chew Realty Pte. Ltd. heard in chambers before the Chief Justice on October 24.

A similar summons taken out by Mr. Tay against another lawyer, Mr. C.S. Wu of Donaldson & Burkinshaw, is scheduled to be heard in chambers at a later date.

This is the first time in legal history that a member of the public has taken out such a summons against the Law Society of Singapore.

Mr. Tay had originally made a complaint against the two lawyers to the Law Society in April last year, which later informed him that there 'was no substance in the complaint.'

In its reply to Mr. Tay's complaint, the Council of the Law Society said: 'The inquiry committee has received a number of complaints arising out of what is clearly a dispute between the directors of a company known as Sin Chew Realty Pte. Ltd.

It appears to the inquiry committee that some of these complaints have almost certainly been made not primarily with a view to the institution of disciplinary proceedings but with a view to the enforcement of the civil rights of the parties without the necessity of their resorting to court.

So far as the complaint of Mr. Tay Beng Swee against Mr. C.S. Wu and Mr. Foo See Juan are concerned, the inquiry committee can find nothing of substance which could in any way justify disciplinary proceedings although the facts do disclose a number of possible claims."

The headlines "Big probe on lawyers" are in bold large letters approximately $\frac{3}{4}$" to 1" in height, and immediately below the headlines is a photograph of the appellant measuring 6" x 2" with the name "Mr. Wu" under it.

At the trial, the respondents by their counsel having admitted the libel, the only issue was the quantum of damages. At the end of the hearing, having reserved judgment, Choor Singh J. for the reasons that follow awarded the appellant $25,000 as compensatory damages. The learned judge said:

"In my opinion each case must be judged on its own particular facts and on its own merits. In the present case a very serious libel has been perpetrated on the plaintiff. It was obviously perpetrated for financial gain, not caring what distress it would cause to the plaintiff and what harm it would inflict on the personal and professional reputation of a very successful advocate and solicitor who is well known in the business world as one of the senior partners of Donaldson & Burkinshaw. He is a man of some standing. The plaintiff is named. His firm is named and his photograph is published. One must look at the original copy of the New Nation of November 12, 1975 to appreciate the impact of the libellous matter on readers of the New Nation. The banner headline informs the readers of the New Nation that there is on foot an investigation into the professional conduct of the plaintiff. There is also a hint of dishonesty. The readers of the New Nation are told that the plaintiff, similarly to Mr. Foo See Juan, another lawyer, has conducted himself unprofessionally in the wrongful disposal of at least two million dollars worth of assets of a property development company. The juxtaposition of the plaintiff's large photograph immediately under the banner headline would give readers of the New Nation the clear impression that the plaintiff was the principal subject of the probe.

Bearing in mind the principles applicable in the assessment of compensatory damages and having regard to the whole conduct of the defendants, in particular their several efforts towards mitigation of damages, and allowing 'for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused' (*per* Lord Radcliffe in *Associated Newspapers* v. *Dingle*, [1964] A.C. at page 399) I award the plaintiff $25,000 as compensatory damages."

At the hearing before us, it was submitted for the appellant that the trial judge had erred in law and fact in not awarding the appellant aggravated damages on the ground of malice.

As regards the facts, it was submitted that on the evidence the trial judge ought to have found that the respondents knew when they published the report that it was false, for it was urged upon us that they knew then there was no probe into the professional conduct of the appellant. That by itself, it was said, was evidence of malice on the part of the respondents. The submission was not a new one. A similar submission made to the trial judge was rejected by him. This is what he said:

"The plaintiff claims aggravated damages on the ground of malice. It is submitted that the defendants knew that their report was false; that they had no genuine belief in its truth and that that is conclusive evidence of malice.

In my opinion the plaintiff has failed to make out a case for aggravated damages. To succeed in his claim for aggravated damages, the plaintiff must prove that the defendants had not acted honestly but were actuated by some indirect or ulterior motive e.g. malice in the proper acceptation of that term. The words complained of were published in a report of a judicial proceeding and the mere proof that they are false is not evidence of malice. The fact that the defendants had no reasonable grounds for believing in their truth is again not, by itself, evidence of malice. At the highest, there is evidence of negligence or carelessness but that again is insufficient to warrant the award of aggravated damages. The question raised is really as to the state of mind of the defendants when they published the alleged libel, the question being whether they published it in the spirit of malice. In my judgment there is no evidence of dishonesty, personal spite, ill will or any wrong or improper motive on the part of the defendants and the words complained of are therefore not coloured by malice. Accordingly, the claim for aggravated damages fails. The plaintiff is entitled to only compensatory damages."

We too are satisfied, on a review of the evidence, that there is no malice on the part of the respondents. Except for the use of the word "probe" in the headlines, and the publication of the appellant's photograph beneath the headlines which are the gravamen in the libel, there is nothing in the contents of the report of November 12, 1975 which can be considered to even hint of malice on the part of the respondents. The fact is on that day there was an application pending before the Honourable Chief Justice by Tay Beng Swee, a member of the public, against the Law Society for an order for the Society to conduct an inquiry into the professional conduct of the appellant. In these circumstances, taking the report as a whole, we agree with the trial judge that at the highest there is only evidence of negligence on the part of the respondents.

Then again, on the topic of malice, we have considered the subsequent conduct of the third respondents, of the three publications in the *New Nation* on November 21, 1975, August 12, 1976 and August 27, 1979 respectively in which are included apologies. The view we take of these three publications is that they rebut any malice on the part of the respondents in respect of the offending publication.

Next, counsel for the appellant submitted that the trial judge had erred in law in making the distinction between "aggravated damages" and "compensatory damages", the argument being that as a result he had applied wrong principles in the assessment of the damages awarded to the appellant.

The submission is founded on the statement of the trial judge where at the end of the passage referred to above he said: "Accordingly, the claim for aggravated damages fails. The plaintiff is entitled to only compensatory damages". We reject the submission as it altogether ignores the whole passage where the trial judge at the beginning pointedly says that he is dealing with the topic of "aggravated damages on the ground of malice". He explains the meaning of malice in the law of libel, he describes the quantum of proof of malice required for aggravated damages, and he finds as a fact no evidence of malice. He then says: "Accordingly, the claim for aggravated damages fails." The reference here is clearly to aggravated damages on the ground of malice. He concludes: "The plaintiff is entitled only to compensatory damages." In the context it can only mean that in determining the compensatory damages the appellant is not entitled to anything on the ground of malice.

Finally, whilst it was conceded for the appellant that the trial judge had properly taken all material factors into account which entitled the appellant to aggravated damages, he had not awarded the appellant an adequate amount as he had erroneously believed that only malice qualified for aggravated damages and not the other material factors. For the reasons we have given we find that there is no merit in the submission. We are satisfied that the trial judge had properly directed himself, and there is no reason for us to interfere with the award that he has made.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Drew & Napier.*

THE FIRST NATIONAL BANK OF CHICAGO v. HOW LEE REALTY PTE. LTD. & ORS.*

[O.C.J. (D'Cotta J.) July 3, 1980]

[Singapore — Civil Suit No. 1464 of 1977]

Banking — Bank granting overdraft facilities — Guarantee for unlimited liability — Guarantor illiterate — Plea of non est factum — Whether guarantor exercised reasonable care when signing document.

The plaintiffs on April 18, 1973 granted overdraft facilities amounting to $2,520,198.91 to the 1st defendant. The said facilities were secured by a mortgage of the land and property known as No. 10 Tomlinson Road, and were guaranteed by the 2nd and 3rd defendants. By a Deed of Guarantee of April 18, 1974 made between the Bank and the 4th defendant the said overdraft facilities were extended for a further period of one year. Summary judgment was obtained by the Bank against the 1st, 2nd and 3rd defendants but leave to defend was granted to the 4th defendant.

The facts revealed that the 4th defendant was illiterate. She had been a land broker for 17-18 years since 1962. In the course of her business she met the 2nd defendant and advised him to purchase the said property. She advanced the 2nd defendant money whenever he could not pay the interest on the overdraft for which he offered her a 25% interest in the said property. Before the said guarantee was signed, the 2nd defendant had told the fourth defendant that the Bank suggested that she be the guarantor. The 2nd defendant also said that he would give her a 50% share in the said property. The 4th defendant claimed that she was happy to sign the guarantee as she regarded it as proof of her 50% holding in the said property. The 2nd defendant did not explain the guarantee to her. She did not know that the document which she signed was a guarantee for an unlimited amount otherwise she would never have signed it.

The said guarantee was later witnessed and signed by a lawyer, who happened to be the 4th defendant's son-in-law, in her absence. The 4th defendant claimed that the contents of the guarantee were never explained to her by either the lawyer or the bank. She pleaded *non est factum.*

Held, dismissing the plaintiff's claim: (1) there was a radical or fundamental difference from what the 4th defendant believed she was signing and the document upon which she was sued;

(2) having regard to all the conditions prevailing at the time when the 4th defendant signed the document, the latter had, in so signing, acted reasonably and prudently; she had successfully established the plea of *non est factum;*

(3) the plaintiffs had appointed the 2nd defendant their agent in obtaining the 4th defendant's signature. They were

* The above judgment was reversed by the Court of Appeal on May 20, 1981.